Law Reform Commission of Canada
Commission de réforme du droit du Canada

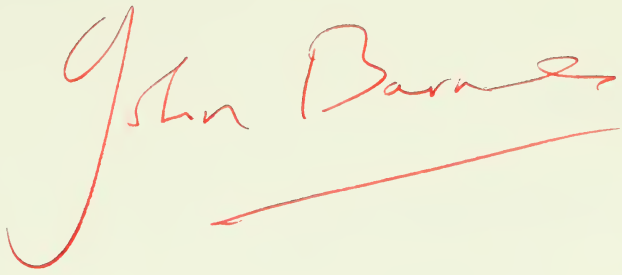
REPORT

INVESTIGATIVE TESTS

alcohol, drugs and driving offences

21

Canada



REPORT 21

INVESTIGATIVE TESTS

ALCOHOL, DRUGS AND DRIVING OFFENCES

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REPORT

ON

INVESTIGATIVE TESTS

ALCOHOL, DRUGS AND DRIVING OFFENCES

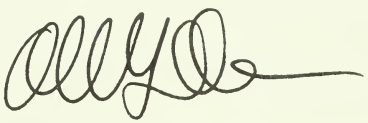
October, 1983

The Honourable Mark MacGuigan, P.C., Q.C., M.P.,
Minister of Justice
and Attorney General of Canada,
Ottawa, Canada.

Dear Mr. Minister:

In accordance with the provisions of section 16 of the *Law Reform Commission Act*, we have the honour to submit herewith this report, with our recommendations on the studies undertaken by the Commission on investigative tests — alcohol, drugs and driving offences.

Yours respectfully,



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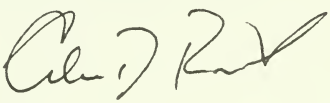

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Introduction

As part of its larger project on Investigative Tests, undertaken within the context of the ongoing Criminal Law Review Project, the Law Reform Commission has reviewed the law relating to two small but fundamental aspects of drug-related and/or alcohol-related driving offences: detection and proof. Despite the enactment in 1969 of the *Criminal Code*'s[1] breathalyzer provisions, questions have arisen as to whether successful prosecution of persons committing such offences might be impeded to some degree by the limitations of the current law.[2] In this brief Report we consider a number of possible changes that might be made to the present breathalyzer provisions of the *Criminal Code* for the purpose of correcting perceived deficiencies. In so doing, we are mindful of the need to maintain what the Government of Canada has recently referred to as the "balance between individual liberties and the provision of adequate powers for the state to allow for effective crime prevention and control...."[3]

The Present Law

Authorization for the taking of breath samples exists under several sections of the *Criminal Code*. Section 235(1) of the *Code*, for example, provides that:

> Where a peace officer on reasonable and probable grounds believes that a person is committing, or at any time within the preceding two hours has committed, an offence under section 234[4] or 236,[5] he may, by demand made to that person forthwith or as soon as practicable, require him to provide then or as soon thereafter as is practicable such samples of his breath as in the opinion of a qualified technician referred to in subsection 237(6)[6] are necessary to enable a proper analysis to be made in order to determine the proportion, if any, of alcohol in his blood, and to accompany the peace officer for the purpose of enabling such samples to be taken.

By section 240.1(1) of the *Code* an identical procedure is authorized "[w]here a peace officer on reasonable and probable grounds believes that a person is committing, or at any time within the preceding two hours has committed, an offence under subsection 240(4) ...",[7] *i.e.*, impaired navigation or operation of a vessel. Section 234.1(1) of the *Code*, which is somewhat different from the above provisions, states that:

> Where a peace officer reasonably suspects that a person who is driving a motor vehicle or who has the care or control of a motor vehicle, whether it is in motion or not, has alcohol in his body, he may, by demand made to that person, require him to provide forthwith such a sample of his breath as in the opinion of the peace officer is necessary to enable a proper analysis of his breath to be made by means of an approved roadside screening device and, where necessary, to accompany the peace officer for the purpose of enabling such a sample of his breath to be taken.

This provision relates essentially to screening, rather than to the investigation of, and the gathering of potential evidence with

respect to, driving offences believed by a peace officer (on reasonable and probable grounds) to have been committed.

As regards the evidentiary effect of breath sample analysis, where such samples have been taken pursuant to a demand under section 235(1), section 237(1)(*c*) of the *Code* provides that where certain technical conditions have been met:[8]

> [E]vidence of the results of the chemical analyses so made is, in the absence of any evidence to the contrary, proof that the proportion of alcohol in the blood of the accused at the time when the offence was alleged to have been committed was, where the results of the analyses are the same, the proportion determined by such analyses and, where the results of the analyses are different, the lowest of the proportions determined by such analyses....

Section 237(1)(*f*) goes on to provide *inter alia* that a certificate of a qualified technician "is evidence of the statements contained in the certificate...." By section 237(4), moreover, "[a]n accused against whom a certificate described in paragraph (1) ... (*f*) is produced ..." may only "require the attendance of the ... qualified technician ... for the purposes of cross-examination" if he or she has obtained leave of the court.

Failure to provide a breath sample when required may result in penal consequences. Sections 234.1(2) and 235(2) of the *Criminal Code* provide that anyone who fails or refuses, without reasonable excuse, to comply with a peace officer's demand for a breath sample under sections 234.1(1) or 235(1) respectively is guilty of a "hybrid" offence. Section 240.1(2) makes unreasonable refusal to comply with a peace officer's demand under section 240.1(1) a summary conviction offence.

Failure to provide a breath sample when required may also give rise to certain evidentiary consequences. Section 237(3) of the *Code* provides, for example, that in any proceedings under section 234 (*i.e.*, for impaired driving) "evidence that the accused, without reasonable excuse, failed or refused to comply with a demand made to him by a peace officer under section 234.1 or subsection 235(1) is admissible and the court may draw an inference therefrom adverse to the accused." By section 240.3 of the *Code*, this provision is made applicable to proceedings under sections 240(4) (impaired navigation or operation of a vessel) and 240.2 (navigation or operation of a vessel when blood alcohol is over .08) as well.

Section 237(3) does not appear to have been made applicable to proceedings under section 236 (driving a motor vehicle when blood alcohol is over .08). Changes to the *Criminal Code* which are suggested in the recently proposed *Criminal Law Amendment Act, 1983*, issued by the Minister of Justice in July of 1983, would provide greater uniformity *vis-à-vis* drug-related and alcohol-related driving offences involving motor vehicles, vessels and aircraft.

The Problem

Many would view the *Code*'s current provisions as inadequate in at least two major respects. First, there is the problem that arises in the case of drivers whose physical condition (*e.g.*, respiratory problems, mouth injury) or mental condition (*e.g.*, unconsciousness) impedes the providing of a breath sample. Although blood-alcohol concentration may be objectively determined by analysis of substances other than breath, the *Criminal Code* provides specifically in section 237(2) that:

> No person is required to give a sample of blood, urine or other bodily substance for chemical analysis for the purposes of this section except breath as required under section 234.1, 235 or 240.1, and evidence that a person failed or refused to give such a sample or that such a sample was not taken is not admissible nor shall such a failure or refusal or the fact that a sample was not taken be the subject of comment by any person in the proceedings.[9]

In the absence of statutory authorization, the taking of blood, urine or other body substance samples will constitute an assault unless the consent of the subject is first obtained.[10] As mentioned above, moreover, the existence of a "reasonable excuse" will preclude both penal and adverse evidentiary consequences from arising as the result of any person's failure or refusal to comply with a demand for a breath sample.

The fact that the *Code* only authorizes the mandatory taking of breath samples points up what is perceived to be the second major inadequacy in the current provisions, *i.e.*, that which arises in cases where intoxication or the cause thereof cannot objectively be determined through breath analysis alone (*e.g.*, where drugs other than alcohol have been ingested).

The Alternatives

There are several alternative approaches that may be taken in order to meet the difficulties just described. Each involves consideration of two issues: expansion of the category of body substances that may be required; and, methods of enforcement.

A. Expanding the Category of Body Substances That May Be Required

There are a variety of body fluids and tissues that, like breath samples, may be analyzed to determine whether intoxicating substances have been ingested. Amongst the most useful are such substances as blood, urine, vitreous humour, stomach contents and liver tissue.[11] The usefulness of most of these substances for our purposes, however, is limited (a) by obvious practical problems involved in the taking of suitable specimens from living persons, and/or (b) by the difficulty in establishing a reliable correlation between the results of chemical analysis of the specimens and the degree (if any) of impairment at the relevant time. Suffice it to say that, of the body substances we have considered, it is our opinion that (apart from breath) blood and urine are the only two that are even *potentially* acceptable from both a practical and scientific standpoint. An apparently similar view prevails in those Commonwealth jurisdictions that have enacted legislation requiring motorists to provide specimens of body substances other than, or in addition to, breath.[12] In assessing the comparative value of blood and urine specimens for our purposes, it is necessary that we consider three basic questions: (1) the extent to which the presence and proportion (if any) of alcohol or other drugs may be determined in each; (2) the extent to which the present proportion (if any) of alcohol or other drugs in each can be used to determine the proportion of alcohol or other drugs in the blood at the relevant time; and (3) the extent to which a useful inference can be made

concerning impairment from the proportion of alcohol or other drugs in the blood at the relevant time.

(i) *Can the presence and proportion (if any) of alcohol or other drugs be determined?*

The presence and proportion (if any) of alcohol in a given sample of blood or urine may be quite reliably and accurately determined through the use of a number of modern scientific techniques.[13] The presence, identity and proportion (if any) of a drug (or metabolite thereof) in a given sample of blood or urine may also be reliably and accurately determined in many cases, though such determination has its limitations and may be problematic because of a number of factors.[14]

(ii) *Can the present proportion (if any) be used to determine the proportion (if any) of alcohol or other drugs in the blood at the relevant time?*

It is generally agreed that relating the proportion of alcohol in a given blood sample to the proportion of alcohol in the donor's blood at the relevant time (*i.e.*, the point when the donor "drives a motor vehicle or has the care or control of a motor vehicle...") with any precision can pose significant problems.[15] Because it is likely that in most cases the sample will have been taken after peak blood-alcohol concentration has been reached, however,[16] the presumption contained in section 237(1)(*c*) of the *Code* is not unreasonable insofar as it will generally be favourable to the accused. As that provision states:

> [W]here a sample of blood of the accused has been taken, if the sample was taken as soon as practicable after the time when the offence was alleged to have been committed and in any event not later than two hours after that time, evidence of the result of a chemical analysis of the sample of blood is, in the absence of any evidence to the contrary, proof of the proportion of alcohol in the blood of the accused at the time when the offence was alleged to have been committed....

Because the dynamics of non-alcoholic drug absorption and removal may be far more complex, however, the logic and/or fairness of a similar presumption regarding blood-drug concentration would be more difficult to support. The extent to which an expert witness will be able to estimate previous blood-drug

concentration from blood sample analysis will depend on a number of factors and will vary from case to case.

Urine samples are somewhat more problematic than blood samples as regards the problem of "relating back". Interpretation of test results may be confounded *inter alia* by questions as to how full the bladder was prior to drug or alcohol ingestion, and how long it has been since the bladder was last voided.[17] Although, in the case of alcohol analysis, such problems can be largely alleviated by the taking of two samples,[18] interpretation of drug concentrations in urine poses more significant difficulties.[19]

(iii) *Can a useful inference be made about impairment from the proportion (if any) of alcohol or drugs in the blood at the relevant time?*

Although the ability of specific non-alcoholic drugs to impair skills that may be relevant to safe driving may be fairly well established, it is doubtful that any well-developed and validated system for detecting and measuring the impairing effects of non-alcoholic drugs on driving currently exists.[20] There is, however, a great deal more experimental evidence as to the impairing effect of alcohol ingestion on driving ability than presently exists regarding the effect of non-alcoholic drug ingestion on driving ability.[21] Perhaps for this reason, the current provisions of the *Criminal Code* contain a statutory inference of sorts concerning the effect of more than 80 milligrams of alcohol in 100 millilitres of blood.[22] While the creation of similar statutory inferences concerning the effects of specified amounts of non-alcoholic drugs would appear to be problematic (particularly when one considers the number of drugs that may induce impairment),[23] it is our view that this fact does not, in itself, constitute a conclusive argument against the enactment of body substance test provisions for the purposes of determining non-alcoholic drug impairment. It will be noted, after all, that the current breathalyzer provisions may be resorted to for the purpose of gathering evidence with respect to the offence of impaired driving, despite the fact that proof of a given blood-alcohol level may not, in itself, be sufficient to establish impairment of the ability to drive for the purposes of sections 234 or 240(4) of the *Code*[24] and that expert evidence relating the accused's blood-alcohol content to impairment may be required.[25] More to the point is the fact that in many (or perhaps most) cases, it will be either extremely difficult or impossible for an expert to draw inferences

as to impairment from blood-drug concentrations alone.[26] It is our opinion, however, that an inability to link impairment of the ability to drive to a given blood-drug level does not diminish the corroborative or explanatory value of blood-drug analysis, in cases where there exists independent evidence of impairment. This fact was recognized by the Australian Law Reform Commission in 1976. Having noted that "[i]n the present state of knowledge and given the presently available equipment and techniques the only appropriate legislative means of control is that afforded by the offence of driving under the influence of drugs or driving under the influence of alcohol or drugs",[27] the Commission went on to state that "it is appropriate to allow for likely technological advances in this area and to make provision accordingly that suspects may be required in certain cases and subject to proper limitations and restrictions, to provide body samples."[28] In their view, "[l]egislation should allow as far as possible for development in methods of ascertaining from body samples the presence and quantity of drugs present in the body where the Breathalyzer, admissions or other available evidence do not explain impaired behaviour."[29]

B. Methods of Enforcement

There are, essentially, three possible methods of ensuring compliance with any statutory scheme devised for the testing of body substances. One method is to enact a penalty for unreasonable failure or refusal to comply with a lawful demand for a sample. As mentioned earlier, this method has been adopted in connection with the *Code*'s current breathalyzer provisions. It has been used for enforcing the requirement for other body substance samples in other Commonwealth jurisdictions.[30] A second alternative is to allow for the admission into evidence of any such unreasonable failure or refusal as a fact from which the court may draw an inference adverse to the accused. Once again, this method has been noted above, in connection with the *Code*'s breathalyzer provisions. Adverse inferences have been statutorily permitted in other jurisdictions in connection with unreasonable failure to provide body substance samples.[31] Third and finally is the option of resort to reasonable force. Though not currently available for the purpose of obtaining body substances from drivers in Canada, reasonable force may be employed in analogous circumstances:

e.g., in the taking of fingerprints under section 2 of the *Identification of Criminals Act*.[32]

In our opinion, neither penalty nor adverse inference would be appropriate where what is being sought from the subject is a urine sample. While, for example, the cases in which a failure or refusal to comply with a lawful demand for a breath sample would be reasonable might be rare indeed, it is extremely doubtful that the same could be said with regard to urine samples. Unlike breath samples, urine samples cannot generally be provided at will.[33] In any case where there has been a failure or refusal to comply, it may be difficult (if not impossible) to ascertain whether such failure or refusal was reasonable. While the technique of catheterization[34] might in theory overcome some problems, it is difficult to see how any failure to submit to so unpleasant a procedure could ever be considered unreasonable. Resort to force would be clearly objectionable, particularly when one considers the limitations on the probative value of urine samples (discussed above) and the provisions of sections 7, 8, and 12 of the *Canadian Charter of Rights and Freedoms*.[35]

Where blood samples are concerned, it is our view that a much stronger argument can be made in favour of a penalty for non-compliance. Venipuncture[36] (perhaps the most suitable method for taking blood samples for drug or alcohol analysis) is a routine medical procedure which, when performed by qualified individuals under appropriate conditions, is both reasonably safe and painless.[37] It may result in the obtaining of relevant and, in many cases, highly probative evidence. We do not, however, recommend the statutory sanctioning of an adverse inference[38] to be drawn from the accused's unreasonable failure or refusal to submit to the taking of a blood sample. There may, in our opinion, be a variety of possible (albeit unreasonable) motives for such failure or refusal which have no logical link to consciousness of guilt.

It is also our opinion that resort to reasonable force ought not to be sanctioned where blood samples are sought in connection with an offence under sections 234, 236, 240(4) or 240.2 of the *Code*. Although the forcible taking of blood samples might, in certain circumstances, be justifiable in the course of investigating more serious offences, the higher risk to safety associated with force, coupled with the higher level of intrusiveness, dictates that it be restricted to exceptional situations and involve prior judicial authorization.

We have also considered the question of whether the non-consensual taking of blood specimens from unconscious drivers should be permitted. In the case of the unconscious driver believed by a peace officer on reasonable and probable grounds to have committed an alcohol-related offence of the type described in sections 234, 236, 240(4) or 240.2 of the *Criminal Code*, we believe it should. We decline, however, to make such a recommendation in the case of (non-alcoholic) drug-related driving offences, in light of the probative limitations of blood-drug analysis discussed above.

Several arguments may, of course, be advanced in support of the contrary position. First, it may be argued that, unless medically indicated for treatment purposes, such procedure may unduly endanger the health or safety of the subject. Second, it may be argued that the non-consensual taking of blood specimens from unconscious drivers would place them in a worse position than conscious drivers who, though perhaps liable to criminal penalty, would be able to refuse to submit to the procedure. Finally, it may be argued that a special provision of the type contemplated is not really necessary; where samples are taken in the course of proper emergency treatment, it may be possible to arrange for their seizure and analysis at some later time.[39] These arguments may raise considerations under sections 7, 8, 12 and 15(1) of the *Charter*. On balance, however — and considering the enormity of the problem caused by drinking drivers, and in particular chronic offenders, in this country — we do not find them convincing. To begin with, as mentioned earlier, the standard techniques for the taking of blood specimens are routine and generally entail few risks. Any residual concerns as to health and safety could, in our view, be dealt with adequately by the enactment of provisions that permit such non-therapeutic blood sampling to be carried out (a) in cases where the person has been hospitalized or is undergoing emergency medical treatment, only once it has been ascertained that the attending physician does not object to the procedure on medical grounds; and (b) only if it is performed by persons qualified by professional training. In addition, it must be pointed out that if the taking of blood samples were only permissible if done pursuant to a demand, unconscious drivers — many of whom will have entered that state as a result of gross intoxication and/or serious accident — would enjoy an unfair advantage over conscious ones. Indeed, this state of affairs might act as an inducement for drinking drivers to feign unconsciousness in order to escape blood sample demands. It is our further belief that the effective prosecution of drinking drivers

involved in serious accidents ought not to be contingent on the possibility of obtaining suitable evidence from "left-over" blood specimens outside the control of law enforcement officers or their agents. Provided that they are taken subject to the conditions mentioned earlier and pursuant to a warrant obtained upon reasonable and probable grounds, and taking into consideration the provision contained in section 1 of the *Charter*,[40] it seems to us that the non-consensual taking of blood samples from unconscious drivers is entirely justifiable.

Our Proposed Solution

Should the *Criminal Code*'s current breathalyzer provisions be expanded to provide for the testing of body substances other than breath? This is perhaps more in the nature of a social or political question than it is either a legal or scientific one. It is certainly arguable that all persons who operate motor vehicles — particularly those who consume drugs or alcohol beforehand — must be taken to have temporarily waived certain rights. It is the extent to which such rights should be suspended that remains to be determined.

As a result of the foregoing analysis, we have arrived at several conclusions pertaining to the ways in which detection and proof of drug-related and/or alcohol-related driving offences might be statutorily enhanced. The recommendations that follow constitute the *maximum* extent to which, in our opinion, expansion of the breathalyzer provisions would be justifiable. It is the Commission's opinion, moreover, that any increased intrusion into the privacy and/or physical integrity of the person, brought about by amendment of the breathalyzer provisions, ought to be accompanied by provisions that guarantee, to the greatest degree possible, both the accuracy of the evidence thus obtained and the health and safety of the individual.

We therefore recommend as follows:

1. That where a peace officer on reasonable and probable grounds believes that a person is committing, or at any time within the preceding two hours has committed, the offence of

(a) driving or having the care or control of a motor vehicle while his or her ability to drive is impaired by alcohol; or

(b) navigating or operating a vessel [or having the care or control of a vessel] while his or her ability to navigate or operate a vessel is impaired by alcohol; or

(c) driving or having the care or control of a motor vehicle after having consumed alcohol in such a quantity that the proportion thereof in his or her blood exceeds 80 milligrams of alcohol in 100 millilitres of blood [; or

(d) navigating or operating an aircraft, assisting in the navigation or operation of an aircraft, or having the care or control of an aircraft while his or her ability to navigate or operate an aircraft is impaired by alcohol; or

(e) navigating or operating a vessel or having the care or control of a vessel after having consumed alcohol in such a quantity that the proportion thereof in his or her blood exceeds 80 milligrams of alcohol in 100 millilitres of blood; or

(f) navigating or operating an aircraft, assisting in the navigation or operation of an aircraft, or having the care or control of an aircraft after having consumed alcohol in such a quantity that the proportion thereof in his or her blood exceeds 80 milligrams of alcohol in 100 millilitres of blood]

such peace officer should be entitled, by demand made to that person forthwith or as soon as practicable, to require him or her to provide then or as soon thereafter as is practicable such samples of his or her breath as, in the opinion of a "qualified technician" (as defined in the *Criminal Code*) are necessary to enable a proper analysis to be made in order to determine the proportion, if any, of alcohol in his or her blood, and to accompany the peace officer for the purpose of enabling such samples to be taken.

The purpose of this recommendation is basically to retain the provisions in sections 235(1) and 240.1(1) of the *Criminal Code* relating to breath sample demands, incorporating (in square brackets) the gist of those amendments set out in the recently proposed *Criminal Law Amendment Act, 1983*. We have included the portions in square brackets solely for the sake of completeness. Although we see no reason why there should not be substantial uniformity regardless of whether a motor vehicle, vessel or aircraft is involved, we do not consider the words in brackets as being essential to our recommendation.

2. That where a peace officer on reasonable and probable grounds believes that a person is committing, or at any time within the preceding two hours has committed, the offence of

(a) driving or having the care or control of a motor vehicle while his or her ability to drive is impaired, either wholly or in part, by a drug other than alcohol; or

(b) navigating or operating a vessel [or having the care or control of a vessel] while his or her ability to navigate or operate a vessel is impaired, either wholly or in part, by a drug other than alcohol [; or

(c) navigating or operating an aircraft, assisting in the navigation or operation of an aircraft, or having the care or control of an aircraft while his or her ability to navigate or operate an aircraft is impaired, either wholly or in part, by a drug other than alcohol]

such peace officer should be entitled, by demand made to that person forthwith or as soon as practicable, to require him or her to submit then or as soon thereafter as is practicable to having such a sample of his or her blood taken from his or her body as in the opinion of a qualified medical practitioner is necessary to enable a proper analysis to be made in order to determine the proportion, if any, and identity, of any drugs in his or her blood, and to accompany the peace officer for the purpose of enabling such sample to be taken.

The purpose of this recommendation is to permit a demand for a blood sample to be made in cases similar to those in which breath samples can be demanded, where the reasonably-believed (total or partial) cause of impairment is a drug other than alcohol. It is similar to provisions enacted in other Commonwealth jurisdictions.[41] This recommendation would not preclude the prior demand for a breath sample under the previous recommendation where the pre-conditions have been met; in many cases it might only be following breath analysis that non-alcoholic drug impairment is reasonably believed by the peace officer to exist.[42] As regards the words in square brackets, our comments on this point after Recommendation 1 apply here as well.

3. That, subject to Recommendation 5, when a person from whom it would otherwise be lawful under Recommendation 1 to require breath samples is unable by reason of injury or illness to

provide such samples, a peace officer should be entitled, by demand made to that person forthwith or as soon as practicable, to require him or her to submit then or as soon thereafter as is practicable to having such a sample of his or her blood taken from his or her body as in the opinion of a qualified medical practitioner is necessary to enable a proper analysis to be made in order to determine the proportion, if any, of alcohol in his or her blood, and to accompany the peace officer for the purpose of enabling such sample to be taken.

The purpose of this recommendation is to permit a demand for a blood sample to be made in cases similar to those in which breath samples can currently be demanded under sections 235(1) and 240.1(1) of the *Code* where the person is unable, by reason of injury or illness, to provide breath samples. It is similar to a provision enacted in the United Kingdom.[43]

It may be argued that a provision of the sort recommended here would contravene section 15(1) of the *Charter*. According to that provision: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on ... physical disability." In light of the fact that the taking of a blood specimen is a safe and virtually painless procedure, and that the direct analysis of a blood sample is the most accurate means of determining blood-alcohol concentration however, it is our view that any curtailment of equality rights brought about by the implementation of this recommendation would constitute one of the "reasonable limits" which pursuant to section 1 of the *Charter* "can be demonstrably justified in a free and democratic society."

4. That, subject to Recommendation 6, when a person whom it would otherwise be lawful for a peace officer to require to supply breath samples under Recommendation 1 is unconscious, a peace officer should be permitted, if authorized by a warrant, to cause such a sample of his or her blood to be taken from his or her body as, in the opinion of a qualified medical practitioner, is necessary to enable a proper analysis to be made in order to determine the proportion, if any, of alcohol in his or her blood.

The reasoning behind this recommendation has been discussed fully above. Its purpose is to enable non-consensual blood samples

to be taken from unconscious drivers (*e.g.*, those who have been involved in serious accidents) believed by a peace officer on reasonable and probable grounds to have committed one of several alcohol-related (but not drug-related) driving offences. The warrant envisioned in this recommendation would, in all likelihood, have to be telephonic in nature, *i.e.*, similar to that recommended in our recent Report on *Writs of Assistance and Telewarrants*.[44]

5. That when a person whom it would otherwise be lawful for a peace officer to require to supply breath samples under Recommendation 1 or to submit to having a blood sample taken from his or her body under Recommendation 2 or 3 has been admitted to a hospital or is undergoing emergency medical treatment, a peace officer should not be permitted to require such person to provide a breath sample or to submit to having a blood sample taken from his or her body unless:

(a) the attending physician has been asked whether he or she objects to such a requirement on the ground that it would be prejudicial to the proper care or treatment of the person; and

(b) the attending physician has not objected on this ground.

The purpose of this recommendation is to protect the health and safety of persons undergoing medical treatment as the result *inter alia* of motor vehicle accidents. It is similar to a provision enacted in the United Kingdom.[45]

6. That, notwithstanding the fact that a warrant has been obtained in accordance with Recommendation 4, where a person either has been admitted to a hospital or is undergoing emergency medical treatment, a peace officer should not be permitted to cause a sample of blood to be taken from the body of that person under Recommendation 4 unless:

(a) the attending physician has been asked whether he or she objects to such procedure on the ground that it would be prejudicial to the proper care or treatment of the person; and

(b) the attending physician has not objected on this ground.

Like Recommendation 5, this recommendation is designed to protect the health and safety of the subject.

7. That where a person, without reasonable excuse, fails or refuses to comply with a lawful demand requiring him or her to supply breath samples or to submit to having a blood sample taken from his or her body, such unreasonable failure or refusal should constitute an offence of the same gravity as the offence with respect to which the demand was made.

The purpose of this recommendation is simply to retain the type of provision in sections 235(2) and 240.1(2) of the *Criminal Code*.

8. That where a person is required to provide a sample of his or her breath or to submit to having a sample of his or her blood taken from his or her body, such person should be statutorily entitled to a warning as to the possible consequences of a failure or refusal to comply with such requirement.

This recommendation is self-explanatory. The requirement for a statutory warning of this type has been enacted in the United Kingdom.[46] In our view it is in keeping with principles which have long been advanced by this Commission and which have recently been endorsed by the Government of Canada in its major policy document on *The Criminal Law in Canadian Society*.[47] We agree that "the criminal law should ... clearly and accessibly set forth the rights of persons whose liberty is put directly at risk through the criminal law process...".[48] As the Government has noted: "This Principle requires that Canadians be made better aware of their substantive and procedural rights vis-à-vis the criminal law."[49]

9. That a person from whom breath samples are taken under Recommendation 1 should be statutorily entitled to have a blood sample taken as well at his or her request, unless it would be impractical to arrange for such procedure to be conducted.

The purpose of this recommendation is to provide the person from whom a breath sample has been lawfully taken with the opportunity to have the most accurate method of blood-alcohol content analysis done where this would be practical. Provisions for the taking of blood specimens, at the request of a person required to provide a breath sample, have been enacted in several Commonwealth jurisdictions.[50]

10. That a person who is entitled to have a blood sample taken at his or her request should be statutorily entitled to be apprised of this right.

This recommendation is self-explanatory. A statutory provision of this type has been enacted in New Zealand.[51]

11. That a person from whom a blood sample is taken should be statutorily entitled to have half of the sample so taken sent to an independent analyst to be analyzed.

The purpose of this recommendation is to ensure the accuracy of any blood sample analysis and to allow the results of any such analysis to be effectively challenged where indicated. Legislation of similar effect has been enacted in several Commonwealth jurisdictions.[52] Although some provisions of this nature have given the person from whom the sample was taken the right to be given the duplicate sample personally, it is our opinion that the type of provision envisioned in our recommendation would raise fewer potential problems with regard to continuity of evidence.

Notwithstanding the fact that a failure to provide an accused person with a sample of his or her own breath has been held not to infringe *per se* either the "fair trial" or "fair hearing" provisions in section 2(*e*) of the *Bill of Rights*[53] or section 11(*d*) of the *Charter*,[54] respectively, we are of the opinion that the type of safeguard suggested in this recommendation is both warranted and necessitated by the intrusive nature of blood testing.

12. That where a person is entitled to have any blood sample taken from him or her analyzed by an independent analyst, such person should be statutorily entitled to be apprised of this right.

This recommendation is self-explanatory.

13. That the taking of a blood sample should not be lawful unless such sample is taken by a person qualified by professional training.

This recommendation is self-explanatory. It is designed to protect, to the maximum extent possible, the health and safety of persons required to provide blood samples. Those jurisdictions in which either blood sample demands or compulsory blood testing is sanctioned generally have similar requirements.

14. That a person from whom it is proposed that a blood sample be taken should be statutorily entitled to have such sample taken in such a manner as to ensure minimum discomfort to that person.

This recommendation is self-explanatory.

15. That where there has been a substantial violation of any of the procedures outlined in the above recommendations, any evidence so obtained should not be admitted, unless the court is of the opinion that its admission would not bring the administration of justice into disrepute, and such evidence would otherwise be admissible.

The procedures we are recommending in this Report will, of course, have to be carried out in conformity with the standards provided in sections 7 and 8 of the *Charter*. In this sense, even if we did not provide for an exclusionary rule in these recommendations, section 24(2) of the *Charter* would protect persons insofar as breaches of these rules might also amount to breaches of the *Charter*. To say this, however, is not to say that all breaches of these rules, even substantial breaches, would necessarily violate the threshold standards provided in the *Charter*. Accordingly, in view of the fact that these rules (particularly those advocated in Recommendations 2, 3 and 4) would permit intrusions not presently contemplated by law, we believe that it is incumbent upon us to do more than rely on section 24 of the *Charter*. We believe it to be essential to attach an exclusionary rule directly to these rules.

Our recommendation is for an exclusionary rule that is different from, and involves a standard of protection slightly higher than, that in section 24(2) of the *Charter*. The rationale behind this recommendation may be summarized in part by reference to the recent *Report* of the Royal Commission on Criminal Procedure.[55] As the Commission has eloquently argued: "Where certain standards are set for the conduct of criminal investigations, citizens can expect, indeed they have a right, to be treated in accordance with those standards. If they are not so treated, then they should not be put at risk nor should the investigator gain an advantage."[56] In their view, "exclusion of good evidence irregularly obtained is the price to be paid for securing confidence in the rules of criminal procedure and ensuring that the public sees the system as fair."[57] Although we are not necessarily committed to the precise formulation set out above, provision of the type recommended above is, in our opinion, a particularly necessary adjunct to the increase in allowable intrusions envisioned by Recommendations 2, 3 and 4. Note, however, that we have advocated *discretionary* (as opposed to automatic) exclusion, and only in cases where there has been a *substantial* violation of

recommended procedures. In so doing, we have attempted to avoid the possibility of having reliable evidence routinely excluded as the result of minor or inadvertent defects in formalities.

In general, we view section 24(2) of the *Charter* as providing a threshold or minimum protection. In principle, the existence of section 24(2) should not preclude a different or higher standard of protection where policy reasons support such extension. The formulation of appropriate exclusionary rules is a matter of concern throughout our work in criminal procedure, and we shall be coming back to this question in future Working Papers and Reports. We are sensitive to the practical reasons for avoiding, in our law, a proliferation of exclusionary rules of varying formulations, and this consideration will weigh heavily in our future deliberations on this important question. For the moment, however, and for the reasons we have given, we believe an exclusionary rule of the sort we have recommended here to be appropriate, in view of the extended authority given to peace officers by our other recommendations.

16. That no medical practitioner or registered nurse should be liable for any failure or refusal to take a blood sample from any person.

This recommendation constitutes an express rejection of the approach taken in some other jurisdictions.[58] It is our opinion that the conscription of physicians (or nurses) into the area of criminal investigation and law enforcement would constitute both an unjustified infringement of the individual rights of members of the medical profession and, in some instances, an unconscionable intrusion into the special relationship of doctor (or nurse) and patient.[59] However, in view of the fact that effective implementation of our recommendations relating to the taking of blood samples will be dependent on the co-operation of certain medical, health and forensic science professionals, we realize that certain protections may also have to be implemented. Such protections might be necessary in order that the liability of these persons does not extend beyond liability for negligence as the result, for example, of a failure by a peace officer to comply with proper procedure, where the fact of such failure is not known by the medical, health or forensic science professional.

Endnotes

1. R.S.C. 1970, c. C-34, as amended.

2. Such concerns have recently prompted action by the provinces. See, *e.g.*: British Columbia's *Motor Vehicle Act*, R.S.B.C. 1979, c. 288, as amended by the *Motor Vehicle Amendment Act (No. 2), 1982*, S.B.C. 1982, c. 73; *The Vehicles Act, 1983* of Saskatchewan, S.S. 1983, c. V-3.1, s. 168; *The Blood Test Act* of Manitoba, S.M. 1980, c. 49. The problem, by its very nature, is not easily quantifiable by empirical data. Statistics do indicate, however, that hospitalized drinking drivers are only rarely prosecuted for impaired driving. In a relatively recent British Columbia study in which blood samples were consensually taken from hospitalized traffic accident victims, with the assurance that the results of analyses would not be used as evidence against them, it was found that only "[s]eventeen per cent of the drivers exceeding a BAC of .08 and 25 per cent of those exceeding .15 were charged for impaired driving under the Criminal Code." See R. A. Rockerbie, *Blood Alcohol in Hospitalized Traffic Crash Victims* (Victoria, B.C.: Ministry of the Attorney General, 1979) at p. 8. See also G. Cimbura, R. A. Warren, R. C. Bennett, D. M. Lucas and H. M. Simpson, *Drugs Detected in Fatally Injured Drivers and Pedestrians in the Province of Ontario* (Ottawa: Traffic Injury Research Foundation of Canada, 1980) at p. 62 where it was found that 26 per cent of those fatally-injured drivers studied had drugs other than alcohol in their bodies. On the basis that "in most substances (with the possible exception of the LSD findings), drugs detected in urine, but not in blood, usually indicate long-term prior consumption rather than recent consumption of the drug" (p. 65), it was concluded (at pp. 65-66) that in 11 per cent of the fatalities studied "*the possibility of contributory effects of drugs or drug combinations could not be eliminated*" (emphasis included). And see J. C. Garriott and N. Latman, "Drug Detection in Cases of 'Driving Under the Influence'", (1976), 21 *Journal of Forensic Science* 398, a study done in Dallas, Texas, in which blood samples of individuals arrested for "driving under the influence" were analyzed in cases where breathalyzer results were "lower than the apparent degree of intoxication..." (p. 398) or where "evidence of drug use [was] apparent from questioning, symptoms, or drug samples found in the individual's possession..." (p. 398). In that

study, drugs (usually methaqualone, diazepam or barbiturates) were detected in 72 per cent of the blood samples analyzed. As suggested below, however (see note 20 and accompanying text), the traffic safety implications of drugs are not statistically clear.

3. Government of Canada, *The Criminal Law in Canadian Society* (Ottawa: Government of Canada, 1982) at p. 50. See *R.* v. *Holman* (1982), 28 C.R. (3d) 378 (B.C. Prov. Ct.) at p. 394, where McCarthy Prov. J. stated with regard to the current breathalyzer provisions: "...[T]here must be a proper balance between the rights and freedoms of the individual, on the one hand, and the interests of society, on the other. I find that such a balance does exist here vis-à-vis s. 235."

4. Section 234(1) of the *Code* provides in part that "[e]very one who, while his ability to drive a motor vehicle is impaired by alcohol or a drug, drives a motor vehicle or has the care or control of a motor vehicle, whether it is in motion or not, is guilty of an indictable offence or an offence punishable on summary conviction...."

5. Section 236(1) of the *Code* provides in part that:

> Every one who drives a motor vehicle or has the care or control of a motor vehicle, whether it is in motion or not, having consumed alcohol in such a quantity that the proportion thereof in his blood exceeds 80 milligrams of alcohol in 100 millilitres of blood, is guilty of an indictable offence or an offence punishable on summary conviction....

6. Section 237(6) of the *Code* provides in part that " 'qualified technician' means a person designated by the Attorney General as being qualified to operate an approved instrument."

7. Section 240(4) of the *Code* provides that "[e]very one who, while his ability to navigate or operate a vessel is impaired by alcohol or a drug, navigates or operates a vessel is guilty of an offence punishable on summary conviction." Note that the breathalyzer provision contained in section 240.1 does not apply where a peace officer, on reasonable and probable grounds, believes that a person is committing, or at any time within the preceding two hours has committed, an offence under section 240.2. According to that section, "[e]very one who navigates or operates a vessel having consumed alcohol in such a quantity that the proportion thereof in his blood exceeds 80 milligrams of alcohol in 100 millilitres of blood, is guilty of an offence punishable on summary conviction."

8. According to that part of section 237(1)(*c*) currently in force, the evidentiary provisions set out therein apply only

> if ... (ii) each sample was taken as soon as practicable after the time when the offence was alleged to have been committed and in any event not later than two hours after that time, with an

interval of at least fifteen minutes between the times when the samples were taken, (iii) each sample was received from the accused directly into an approved container or into an approved instrument operated by a qualified technician, and (iv) a chemical analysis of each sample was made by means of an approved instrument operated by a qualified technician....''

9. But see: British Columbia's *Motor Vehicle Act*, *supra* note 2, sections 220.2 and 220.3; *The Vehicles Act, 1983* of Saskatchewan, *supra* note 2, section 168(3), (4) and (5).

10. See: *R.* v. *Frechette* (1948), 93 C.C.C. 111 (Que. Sess.); *R.* v. *Burns, [1965] 4 C.C.C. 298 (Ont. H.C.); W.* v. *W. (No. 4)*, [1963] 2 All E.R. 386, aff'd [1963] 2 All E.R. 841 (C.A.); Criminal Law Reform Committee, *Report on Bodily Examination and Samples as a Means of Identification* (Wellington, N.Z.: Criminal Law Reform Committee, 1978), paragraph 9 at p. 4.

11. See Cimbura, *supra* note 2 at p. 15.

12. See, *e.g.*: the United Kingdom's *Road Traffic Act 1972*, 1972 (U.K.) c. 20, as amended by section 25(3) and Schedule 8 of the *Transport Act 1981*, 1981 (U.K.) c. 56; Victoria's *Motor Car Act 1958*, S.V. 1958, No. 6325, as amended; and New Zealand's *Transport Act 1962*, S.N.Z. 1962, No. 135, as amended. See also: British Columbia's *Motor Vehicle Act*, *supra* note 2; *The Vehicles Act, 1983* of Saskatchewan, *supra* note 2.

13. See: A. S. Curry, ''Reliability and Significance of Results of Alcohol and Drug Analyses'', in S. Israelstam and S. Lambert, eds., *Alcohol, Drugs and Traffic Safety: Proceedings of the Sixth International Conference on Alcohol, Drugs and Traffic Safety, Toronto, September 8-13, 1974* (Toronto: Addiction Research Foundation of Ontario, 1975) 469 at p. 476; H. J. Walls and A. R. Brownlie, *Drink, Drugs and Driving* (London: Sweet and Maxwell, 1970) at pp. 80-98.

14. See: Curry, *supra* note 13 at pp. 476-477; Walls and Brownlie, *supra* note 13 at pp. 109-110; Law Reform Commission of Australia, *Alcohol, Drugs and Driving* [Report No. 4] (Canberra: Australian Government Publishing Service, 1976), paragraph 123 at p. 54; B. S. Finkle, '' 'Will the Real Drugged Driver Please Stand Up?' An Analytical Toxicology Assessment of Drugs and Driving'', in Israelstam and Lambert, *supra* note 13 at pp. 608-609; F. B. Benjamin, *Alcohol, Drugs and Traffic Safety: Where Do We Go From Here?* (Springfield, Ill.: Charles C. Thomas, 1980) at pp. 52-53. For descriptive reports on various techniques see, *e.g.* W. T. Lowry and J. C. Garriott, *Forensic Toxicology: Controlled Substances and Dangerous Drugs* (New York: Plenum, 1979) at pp. 103-115, as well as the following: (1975), 20 *Journal of Forensic*

Science 382; (1976), 21 *Journal of Forensic Science* 98; (1977), 22 *Journal of Forensic Science* 7; (1978), 23 *Journal of Forensic Science* 29; (1979), 24 *Journal of Forensic Science* 46; (1980), 13 *Canadian Society of Forensic Science Journal* 31.

15. See: Special Committee of the British Medical Association, *Report: The Medico-Legal Investigation of the Drinking Driver* (London: British Medical Association, 1965) at pp. 32-33; Law Reform Commission of Australia, *supra* note 14, paragraph 122 at pp. 53-54; Walls and Brownlie, *supra* note 13 at p. 102.

16. Special Committee of the British Medical Association, *supra* note 15 at p. 33.

17. See: A. A. Moenssens and F. E. Inbau, *Scientific Evidence in Criminal Cases*, 2nd ed. (Mineola, N.Y.: Foundation Press, 1978) at pp. 77-78; Law Reform Commission of Australia, *supra* note 14, paragraph 284 at p. 122.

18. See R. E. Erwin, *Defense of Drunk Driving Cases*, vol. 2, 3rd ed. (New York: Matthew Bender, 1983) at p. 254, where it is stated that:

> [T]he only way to avoid ... error is to obtain a specimen of urine which is not part of a pool that has been accumulating in the bladder for any appreciable time. This can be done by having the subject empty [his] bladder first. This urine is discarded. As soon as possible thereafter a second sample is obtained. The latter will more closely reflect the alcohol content of the blood at the time.

This procedure has, in effect, been adopted in the United Kingdom's *Road Traffic Act 1972*, *supra* note 12.

19. Curry, *supra* note 13 at pp. 478-479. Urine samples may, however, be valuable for screening purposes.

20. Cimbura, *supra* note 2 at p. 4, citing K. B. Joscelyn and R. P. Maickel, *Drugs and Driving: A Research Review*, NHTSA, 1975 at p. 46. See also Benjamin, *supra* note 14 at pp. 53 and 61.

21. Law Reform Commission of Australia, *supra* note 14, paragraph 123 at p. 54; Walls and Brownlie, *supra* note 13 at p. 107. For examples of the numerous studies on the effect of alcohol ingestion on driving ability, see: Commission on "Driving While Under the Influence of Drink or a Drug", *Report* (Dublin: Stationery Office, 1963) at pp. 27-29; Walls and Brownlie, *supra* note 13 at pp. 45-61.

22. See *Criminal Code*, sections 236 and 240.2.

23. See Cimbura, *supra* note 2, at pp. 2-4, and the studies cited therein. See also Law Reform Commission of Australia, *supra* note 14, paragraph 235 at pp. 100-101.

24. See: *R.* v. *Ostrowski*, [1958] O.R. 708 (H.C.); *R.* v. *Akerholdt*, [1971] 3 W.W.R. 545 (Y.T. Mag. Ct.); *R.* v. *Friesen* (1977), 9 A.R. 361 (Dist. Ct.); *R.* v. *Lord* (1958), 120 C.C.C. 175 (Ont. H.C.); *R.* v. *Serré* (1980), 29 N.B.R. (2d) 324 (Q.B.); I. M. Rabinowitch, "Medicolegal Aspects of Chemical Tests of Alcoholic Intoxication", (1948), 26 *Canadian Bar Review* 1437. But see also: *R.* v. *Oliver* (1972), 9 C.C.C. (2d) 526 (N.S. Co. Ct.); H. R. S. Ryan, "Use of Chemical Tests to Prove Impairment by Alcohol", (1959-60), 2 *Criminal Law Quaterly* 41. And see generally: R. M. McLeod, J. D. Takach and M. D. Segal, *Breathalyzer Law In Canada*, 2nd ed. (Toronto: Carswell, 1982) at pp. 1-109 — 1-117.

25. See: *R.* v. *Servello* (1962), 40 W.W.R. 306 (B.C. Co. Ct.); *R.* v. *Miller* (1963), 42 W.W.R. 150 (B.C. Co. Ct.); *R.* v. *Adams* (1958), 30 W.W.R. 429 (Alta. Dist. Ct.); *R.* v. *Arnold* (1961), 38 W.W.R. 449 (Sask. Dist. Ct.); *R.* v. *Hann*, [1968] 4 C.C.C. 301 (N.S. Co. Ct.); *R.* v. *Brissette* (1966), 57 W.W.R. 1 (B.C. S.C.); *R.* v. *Bunniss* (1964), 50 W.W.R. 422 (B.C. Co. Ct.); *R.* v. *Lord*, *supra* note 24. And see McLeod, *supra* note 24, at pp. 1-109 — 1-117.

26. Curry, *supra* note 13 at pp. 479-480; R. Bonnichsen, "Aspects of Drug Analyses in Relation to Road Traffic Legislation and Supervision", in Israelstam and Lambert, *supra* note 13, at pp. 503-504. As Bonnichsen has noted (at p. 504):

> Conclusions drawn from a blood analysis about a driver's impairment are ... limited. Other circumstances must be considered including the driving, the police observations, witnesses, the doctor's examination ... and finally the result of the analysis that could at least give a reason for the symptoms of the intoxication.

27. *Supra* note 14, paragraph 235 at p. 101.

28. *Ibid.*

29. *Ibid.*

30. See, *e.g.*: section 8(7) of the United Kingdom's *Road Traffic Act 1972*, *supra* note 12; section 58C of New Zealand's *Transport Act 1962*, *supra* note 12. See also: section 220.3 of British Columbia's *Motor Vehicle Act*, *supra* note 2; section 168(5) of *The Vehicles Act, 1983* of Saskatchewan, *supra* note 2.

31. See *e.g.*, section 58C of New Zealand's *Transport Act 1962*, *supra* note 12.

32. R.S.C. 1970, c. I-1. Section 2(2) provides that "[s]uch force may be used as is necessary to the effectual carrying out and application of such measurements, processes and operations" as are sanctioned by the Act.

33. See W. D. Glauz and R. R. Blackburn, "Drug use among drivers" (Technical Contract Report for the U.S. Department of Transportation, National Highway Traffic Safety Administration, February, 1975), cited by Cimbura, *supra* note 2 at p. 7. In the voluntary study described therein, only three-quarters of the participant motorists were able to produce a urine specimen upon request. See also the Commission on "Driving While Under the Influence of Drink or a Drug", *supra* note 21, paragraph 58 at p. 47.

34. *I.e.*, the passing of a tube through the urethra into the bladder. See W. H. L. Dornette, ed., *Stedman's Medical Dictionary*, 5th Unabridged Lawyers' Edition (Cincinnati: Anderson, 1982) at p. 237.

35. Being Part I of the *Constitution Act, 1982*. Section 7 provides in part that "[e]veryone has the right to ... security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." Section 8 provides that "[e]veryone has the right to be secure against unreasonable search or seizure." Section 12 provides that "[e]veryone has the right not to be subjected to any cruel and unusual treatment or punishment."

36. "Venipuncture" is defined in *Stedman's Medical Dictionary*, *supra* note 34 at p. 1548 in part as "[t]he puncture of a vein ... to withdraw blood...."

37. See Walls and Brownlie, *supra* note 13 at p. 67.

38. See sections 237(3) and 240.3 of the *Code*.

39. See *R.* v. *Carter* (1983), 31 C.R. (3d) 76 (Ont. C.A.). It may even be possible to obtain blood samples from the scene of the accident. See *R.* v. *LeBlanc* (1981), 64 C.C.C. (2d) 31 (N.B. C.A.), leave to appeal to S.C.C. refused February 1, 1982.

40. As that section states: "The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

41. See, *e.g.*: the United Kingdom's *Road Traffic Act 1972*, *supra* note 12, sections 8(1)(*b*) and 8(3)(*c*); New Zealand's *Transport Act 1962*, *supra* note 12, section 58B (1)(e). See also *The Vehicles Act, 1983* of Saskatchewan, *supra* note 2.

42. See Law Reform Commission of Australia, *supra* note 14, paragraph 123 at p. 54, where it is noted: "...[B]reath analysis may be of assistance in a negative way. A 'clear' breath analysis in the case of a person apparently under the influence of alcohol may properly lead to further tests being carried out to determine the cause of bizarre or unusual behaviour."

43. See the United Kingdom's *Road Traffic Act 1972*, *supra* note 12, section 8(3)(*a*). See also *The Vehicles Act, 1983* of Saskatchewan, *supra* note 2, section 168(3).

44. Law Reform Commission of Canada, *Writs of Assistance and Telewarrants* [Report 19] (Ottawa: Minister of Supply and Services Canada, 1983).

45. See the United Kingdom's *Road Traffic Act 1972*, *supra* note 12, section 9.

46. See the United Kingdom's *Road Traffic Act 1972*, *supra* note 12, section 8(8).

47. *Supra* note 3.

48. *Ibid.*, at p. 53.

49. *Ibid.*, at p. 60.

50. See, *e.g.*: the United Kingdom's *Road Traffic Act 1972*, *supra* note 12, section 8; Victoria's *Motor Car Act 1958*, *supra* note 12, section 80F; New Zealand's *Transport Act 1962*, *supra* note 12, section 58B.

51. See New Zealand's *Transport Act 1962*, *supra* note 12, section 58(4)(a).

52. See: Law Reform Commission of Australia, *supra* note 14, paragraph 68 at p. 27; the United Kingdom's *Road Traffic Act 1972*, *supra* note 12, section 10(6); New Zealand's *Transport Act 1962*, *supra* note 12, section 58B.

53. R.S.C. 1970, App. III. See *Duke* v. *The Queen*, [1972] S.C.R. 917.

54. See *R.* v. *MacDonald* (1982), 1 C.C.C. (3d) 385 (Ont. Co. Ct.). See also *R.* v. *Potma* (1983), 31 C.R. (3d) 231 (Ont. C.A.).

55. Cmnd. 8092 (London: H.M.S.O., 1981).

56. *Ibid.*, paragraph 4.130 at p. 115.

57. *Ibid.*

58. See, *e.g.*: Victoria's *Motor Car Act 1958*, *supra* note 12, section 80DA(1); New Zealand's *Transport Act 1962*, *supra* note 12, section 58D(2).

59. See: Law Reform Commission of Australia, *supra* note 14, paragraph 306 at p. 130.

Commission de réforme du droit du Canada
Law Reform Commission of Canada

RAPPORT

LES MÉTHODES D'INVESTIGATION SCIENTIFIQUES

l'alcool, la drogue et la conduite des véhicules

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Canada